IN THE HIGH COURT OF JUDICATURE,

ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 13010 of 2005

Between:

1. Sakinala Harinath, S/o.Late somanatham,
   Mandal Parishad Primary school, Lacchugudem, kanegal (M),
   Nalgonda District.

2. Govt Teachers Association, (regd.No.1063/79), A.P., Hyderabad, Rep by its President, N.Krishnaiah,

3. Madduru Suryanarayana Murthy, S/o.China Rama Somayaji Sastry,
   Ungutur, W.G.District.

4. D.V.Rama Sastry. S/o.Kanakam, Bhimavaram, W.G.District.

5. V.Venkata Lakshmi, W/o. Vithal, Govt Girls High School, Rajahmundry,
   E.G.District.

..... PETITIONERS

AND

1. The Govt of A.P., Rep by its Secretary, School Education Dept.,
   Secretariat, Saifabad, Hyderabad.

2. The Govt of A.P, Rep by its Prl. Secretary, Legislative Affairs & Justice
   (FAC), Law Department, Secretariat, Hyderabad.

3. The Commissioner & Director of School Education, Govt of A.P,
   Hyderabad.

4. A.P. United Teachers Federation, Rep by its Secretary, Hyderabad.

5. Panchayat Raj Teachers Union, Rep by its General Secreatry, P.Sudhakar Reddy, S/o.Sai Reddy, ZP High School (Girls), Boyampalli, RR.Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the Ordinance No.12 of 2005 of Govt of A.P, gazzetted on 13/6/2005 as illegal, unconstitutional and unsustainable in law and consequently set aside the same and pass such other order or orders.

Counsel for the Petitioner: MR.K.R.PRABHAKAR.

Counsel for the Respondents: ADVOCATE GENERAL.

The Court at the stage of admission made the following :

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

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WRIT PETITION NO.13010 OF 2005

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ORAL ORDER:

(Per the Hon'ble Sri Justice J. Chelameswar)

This writ petition is filed with the prayer as follows:

> "For the reasons stated in the accompanying affidavit, the Petitioners herein pray that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring the Ordinance No.12 of 2005 of Government of Andhra Pradesh, gazetted on 13/6/2005 as illegal, unconstitutional and unsustainable in law and consequentially set aside the same and pass such other order or orders as are deemed fit

and proper in the circumstances of the case."

The challenge, as can be seen from the prayer, is to the constitutionality of the Ordinance No.12 of 2005 of the State of Andhra Pradesh. The background on which present writ petition arises is as follows:

There are various schools run by the State of Andhra Pradesh and also by the local bodies like the Zilla Parishads etc. The service conditions of the teachers working in the schools run by the Government of Andhra Pradesh are governed by the Andhra Pradesh School Educational Subordinate Service Rules, whereas the service conditions of the teachers working in the above mentioned Panchayat Raj institutions earlier, were governed by the Rules issued under various G.O.Ms.No.936, dated 17-07-1962 and G.O.Ms.No.33, dated 25-01-1966 etc. The State of Andhra Pradesh thought it appropriate to "provincialise" the services of the teachers working in various schools run by the Panchayat Raj institutions and therefore, brought the services of such teachers within the purview of the Andhra Pradesh School Educational Subordinate Service Rules. The decision of the Government in bringing the services of the teachers working under the Panchayat Raj institutions was challenged and the matter eventually came to this Court. A Division Bench of this Court in Writ Petition No.11325 of 2000 and batch dated 18-09-2003, held that the decision of the State to bring the teachers working in the Panchayat Raj institutions within the purview of the Andhra Pradesh School Educational and Subordinate Service Rules, illegal on various grounds, the details of which are not necessary for the present purpose. The correctness of the said decision, it appears, is pending consideration before the Supreme Court in S.L.P.No.7496 of 2004.

However, the State of Andhra Pradesh thought it fit to promulgate the Ordinance in question.

The substance of the Ordinance is that all the posts of teachers in the above mentioned two categories are abolished, however, the Ordinance stipulates, notwithstanding such abolition, the teachers working in either of the above mentioned two categories, shall continue to hold the posts on the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity etc., as they enjoyed as on the date of abolition of their respective cadres. The future of all these employees insofar as their service

conditions are concerned, is required to be regulated by the Rules to be framed by the State of Andhra Pradesh, which Rules are not yet made.

In the above mentioned background, the present writ petition came to be filed challenging the State Ordinance by four individual teachers, who were earlier governed by the Andhra Pradesh School Educational and Subordinate Service Rules, and also by a registered Association of the Government Teachers of Andhra Pradesh.

When the matter is taken up, the learned Advocate General appearing for the State of Andhra Pradesh raised a preliminary objection that in view of the declaration made by the Supreme Court in L.CHANDRA KUMAR v. UNION OF INDIA AND OTHERS , the present writ petition cannot be entertained by this Court as it is a matter over which the Andhra Pradesh Administrative Tribunal has the jurisdiction to adjudicate upon and also having regard to the declaration of law made by the Supreme Court in the judgment L. CHANDRA KUMAR's case cited supra, which is to the following effect.

> "…….. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned."

On the other hand the learned senior counsel appearing for the petitioners Sri S.Ramachandra Rao submitted that though the declaration of the legal position made by the Supreme Court in L. CHANDRA KUMAR's case cited supra, broadly debars this Court from entertaining the disputes of the employees of the State of Andhra Pradesh as a Court of first instance, the principle is not absolute as was pointed by the Supreme Court in T.K.RANGARAJAN v. GOVERNMENT OF TAMIL NADU AND OTHERS . It was a case where the services of a large number of employees of the State of Tamil Nadu were terminated by the State of Tamil Nadu, which was described by the Supreme Court as an "unprecedented action". The Supreme Court at Paragraph No.5 of said decision held as follows:

> "5. At the outset, it is to be reiterated that under Article 226 of the Constitution, the High Court is empowered to exercise its extraordinary jurisdiction to meet unprecedented extraordinary situation having no parallel. It is equally true that extraordinary powers are required to be

sparingly used. The facts of the present case reveal that this was most extraordinary case, which called for interference by the High Court, as the State Government had dismissed about two lacs employees for going on strike."

In the above mentioned background, the Supreme Court came to the conclusion that though the earlier Larger Bench of the Supreme Court in the L. CHANDRA KUMAR's case cited (1 supra), is unexceptionable, the High Court was not justified in refusing to exercise its jurisdiction under Article 226 of the Constitution of India in that particular case as according to the Supreme Court it was a "very very exceptional circumstance".

Learned senior counsel Sri S.Ramachandra Rao argued that the case on hand is also falls under one of those "very very exceptional circumstances" as by virtue of the impugned Ordinance, the rights and obligations of about 2.7 lakhs of teachers would be affected. He further submitted that the case involves intricate questions of law involving interpretation of the Constitution, more particularly, the Article 371D, and therefore, it is a matter where the High Court is required to exercise its extraordinary jurisdiction.

On the other hand, the learned Advocate General pointed out that the situation on hand is totally different from the situation that occurred, which lead to the decision in T.K.RANGARAJAN's case cited (2 supra), as it was a case where about two lakhs of employees were dismissed from service and their livelihood was affected, whereas in the present case, the livelihood of the none of the teachers belong to either of the cadres is affected, as can be seen from the Ordinance since there is categoric declaration that their services would be continued on the same terms and conditions, which apply to them in the abolished cadres, until appropriate Rules are made and therefore, the case on hand is not in any way akin to the case before the Supreme Court in T.K.RANGARAJAN's case cited (2 supra).

The fact that intricate questions of law are involved and interpretation of the Constitution are likely to arise or do arise, is not by itself a consideration for exercise of the jurisdiction of this Court under Article 226 of the Constitution, in view of the decision of the Supreme Court in L. CHANDRA KUMAR's case cited (1supra). The Supreme Court, in fact, considered this case at Paragraph No.90 of the judgment as

follows:

> "…… It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter."

Then, the only other question which requires an examination is whether it is a "very very exceptional situation", which demands interference of this Court.

In view of the fact that the employment of the petitioners is continuing under the same terms and conditions of which they were employed prior to abolition of the cadres to which they belong, we are of the opinion that this is not a case which falls under the description "very very exceptional" pointed in T.K.Rangarajan's case cited (2 supra), though we do admit that having regard to the fact that the rights of a large number of teachers are involved, it is an unprecedented situation. As we do not see any immediate threat to their continuance in service and prejudice to their service conditions, we uphold the preliminary objection raised by the Advocate General.

We therefore, refrain ourselves from examining the merits of the challenge to the Ordinance. It is open for the petitioners to take appropriate further steps in this matter. Writ petition is therefore, dismissed.

After the order is pronounced, the learned counsel for the petitioners Sri S.Ramachandra Rao submited that the petitioners desire to approach the Supreme Court challenging the correctness of the order passed today and therefore, he submitted that the State be refrained from taking any action which is likely to adversely affect the interests of the petitioners i.e., those teachers who are formerly governed by the Andhra Pradesh School Educational and Subordinate Service Rules. His apprehension is that the Rules contemplated under Section 5 of the Ordinance, are likely to be made in the near future, and promotions are likely to be made on the basis of such Rules. He also submitted that in view of the fact that the Supreme Court is closed for vacation and it will be reopened on 11th July 2005, there will be some difficulty to the petitioners to approach the Supreme Court. On the other hand, the learned Advocate General submitted that this Court would be slow to make any interim order while refusing to entertain a writ petition and submitted that the prayer of the petitioners cannot be accepted.

We have considered both the submissions. The fact remains that no Rules are made so far dealing with the service conditions of the teachers of either of the categories referred to earlier. In those circumstances, we are of the opinion that the State be directed to maintain *status quo* insofar as the promotions are concerned for a period of fifteen days from today.

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J.Chelameswar, J

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M.Venkateswara Reddy, J

Note:

Issue copy of the order by tomorrow.

(bo)

mrk

29th June 2005.

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To

1. The Secretary, School Education Dept., Govt of A.P., Secretariat, Saifabad, Hyderabad.
2. The Prl. Secretary, Legislative Affairs & Justice (FAC), Law Department, Govt of A.P, Secretariat, Hyderabad.
3. The Commissioner & Director of School Education, Govt of A.P, Hyderabad.
4. Two CCs to the Advocate General, High Court of A.P., Hyderabad (OUT).
5. Two CD copies.
6. One CC to Mr. Prabhakar, counsel for the petitioners.

*Form-NIC-OGS/WP{**TRR**}*

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

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WRIT PETITION NO.13010 OF 2005

ORAL ORDER:

(Per the Hon'ble Sri Justice J. Chelameswar)

29th June 2005